SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

Preliminary Draft Staff Report

Proposed Amended Rule 2002
Allocations for Oxides of Nitrogen (NO_x) and Oxides of Sulfur (SO_x)

Proposed Amended Rule 2004
Requirements

Proposed Amended Rule 2007
Trading Requirements

Proposed Amended Rule 2010
Administrative Remedies and Sanctions

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Introduction

The Board adopted Regulation XX – Regional Clean Air Incentives Market (RECLAIM) program in 1993. The purpose of RECLAIM is to reduce Nitrogen Oxides (NOx) and Sulfur oxides (SOx) emissions through a market-based program, which is designed to provide facilities with flexibility to seek the most cost-effective solutions to reduce their emissions. Staff often proposes administrative amendments to Regulation XX to clarify the rule language and to ensure effectiveness and consistent implementation of the RECLAIM program.

Proposed Amendments

Rule 2002 – Allocations for Oxides of Nitrogen (NOx) and Oxides of Sulfur (SOx)

- ***Year 2000 Tier I Emission Factors for Cement Kilns***

The purpose of Rule 2002 is to establish the methodology for calculating facility Allocations and adjustments to RTC holdings for NOx and SOx. Rule 2002, Table 1 – RECLAIM NOx Emission Factors, contains starting emission factors and 2000 (Tier I) ending emission factors for various NOx emitting sources. The starting emission factors are used to establish starting allocations following the methodology specified in subdivision (c) of Rule 2002; and the ending emission factors are used to establish allocations for year 2000 following the methodology in subdivision (d) of Rule 2002.

These emission factors in Table 1 are generally stated in units of pounds of NOx per unit of throughput. For example, for cement kilns, Table 1 includes emission factors in units of lbs NOx per million cubic foot of natural gas used, lbs NOx per 1000 gals of diesel light distillate, lbs NOx per ton of cement produced, or lbs of NOx per ton of clinker produced. Table 1 currently does not contain information to distinguish which emission factors were used to establish year 2000 allocations for gray cement kilns and white cement kilns.

Rule 2015 - Backstop Provisions, paragraph (c)(3), required evaluations of emission factors for several categories, including gray cement kilns in clause (c)(3)(B)(ii). A technology assessment conducted by the District staff, and approved by the Governing Board in 1996,

determined that an emission factor of 2.73 lbs NOx per ton clinker should be used to calculate the 2000 allocation for gray cement kilns[1].

There are two cement kiln manufacturing facilities in the District, California Portland Cement located in Colton (Facility ID 800181) and Riverside Cement located in Riverside (Facility ID 800182). Currently, California Portland Cement operates two kilns producing gray cement and Riverside Cement operates two kilns producing white cement. (In addition to the two white cement kilns, Riverside Cement had two gray cement kilns in operation, however the operation of the gray cement kilns stopped since 1987). The difference between the two white and gray cement kilns is that the gray cement kilns in California Portland Cement use coal, coke, tire and natural gas and the white cement kilns in Riverside Cement use fuel oil and natural gas. White cement kilns use different fuels to avoid darker color of the products.

Staff proposes minor amendments to Table 1 of Rule 2002 to clarify that the emission factor of 2.73 lbs NOx per tons clinker is for gray cement only and the emission factor of 2.85 lbs NOx per 1000 gals is for white cement only. Clarification of fuel types for these two categories is also being proposed.

- ***Minor Typographical Error***

In addition, a minor typographical error in Rule 2002(f)(1)(F) is being corrected to specify that the Executive Officer is no longer required to publish adjustment factors at a public hearing once the adjustment factors for the 2011 (not 2010 as currently shown in the rule language) compliance year have been implemented for a 12-month period.

Rule 2004 – Requirements

- ***Exemption from Quarterly Certification Requirements***

The purpose of Rule 2004 is to establish the requirements for operating under the RECLAIM program. The rule includes provisions pertaining to permits, allocations, reporting, variances, and breakdowns. As specified in subdivision (b) of Rule 2004, a RECLAIM Facility Permit holder is required to calculate their facility's total emissions, acquire necessary RECLAIM trading credits to reconcile the allocations to the emissions, and submit a Quarterly

[1] Part II – Final Staff Report for Rule 2015 Technology Reviews and Proposed Amendments to Rule 2002 – Allocations for NOx and SOx, May 31, 1996.

Certification of Emissions Report (QCERs) to the District on a quarterly basis. RECLAIM facilities that no longer have any NOx and SOx emitting sources (which are either permitted, non-permitted, rental, leased, or operated by a third party contractor) located at the facilities have requested an exemption from submitting numerous certifying quarterly reports and the annual APEP report with zero emissions. Staff proposes to revise Rule 2004(b), by adding paragraph (b) (6), to allow for this administrative change. To ensure there are indeed no NOx and SOx emissions generated at these facilities, staff proposes to require:

- The Facility Permit holder submit an application for permit amendment;

- Permit conditions are added to the Facility Permit to ensure that there are no NOx or SOx emissions at the facility at all times and that the Facility Permit holder is exempt from quarterly and annual certification of zero emissions;

- In the event of a violation of this paragraph (such as rental equipment discovered to be operated at the facility, for which the Facility Permit had not been amended to allow the operation of any NOx and SOx sources), in addition to violating any applicable AQMD rules, the violation will be assessed as a single, separate violation for each day that the source is on the premises. During the violating period, emissions will be calculated based on maximum capacity of the equipment and 24-hrs operating per day for each day that the source was on the premises; and

- If NOx or SOx equipment is located at the facility after an exemption is granted, the Facility Permit has to be amended to allow operation of such equipment, and the facility would no longer be exempt from the certification of emissions.

Rule 2007 - Trading Requirements

- ***Reporting Requirements for Parties Entered Into a Forward Contract***

The purpose of Rule 2007 is to define the RECLAIM trading unit and to establish trading requirements for RECLAIM. Rule 2007(e)(2)(C) establishes the reporting requirements for acquisition of RTCs through contingent right or forward contract agreements.

A contingent right contract is an agreement between two parties to buy, sell or swap RTCs at a pre-agreed price and delivery date at a future point in time. The transaction may occur

through the help of an agent, broker or other intermediary representatives. The date when the contract is signed is commonly different than the time that the transaction actually occurs or is executed. The parties involved in a contingent right contract are required to submit a report of the agreement and a Registration of RTC Transfer to the District.

Within 5 business days of the contract agreement, the parties are required to submit a "Report of Contract Agreement" to the District identifying the volume of RTCs involved and the agreed upon prices of RTCs and the RTC transfer date. The identification of the seller and the buyer need not be specified in the "Report of Contract Agreement".

The seller or buyer may or may not choose to exercise the contingent right under contract. If the parties choose to exercise the right, the parties are required to submit a "Registration of RTC Transfer" to the District containing all information specified in paragraph (e)(2) of Rule 2007. Among other information, this "Registration of RTC Transfer" must include the identification of the seller and buyer.

Similar to the contingent right contract, a forward contract is also an agreement between two parties to buy, sell or swap RTCs at a pre-agreed price and date at a future point in time. However, in a forward contract, the parties are obligated to execute this contract. Similarly, the parties involved in a forward contract are required to submit the same "Report of Contract Agreement" and the "Registration of RTC Transfer" to the District. However, the current language in Rule 2007(e)(2)(C)and (e)(2)(H) are not explicit, therefore the current language in Rule 2007(e)(2)(C) and (e)(2)(H) are being proposed for amendment to clearly specify that:

- The parties involved in the forward contact need to submit a "Registration of RTC Transfer" similarly to the parties involving in a contingent right contract; and

- The "Registration of RTC Transfer" must be submitted within 5 business days of any payment to the owner of the RTCs for forward contract. For contingent right contracts, this "Registration of RTC Transfer" must be submitted within 5 business days of executing the contract.

Consequently, the current language in Rule 2007(e)(2)(C) related to the "Registration of RTC Transfer" specified in Rule 2007(e)(2)(H) is deleted to avoid duplication.

- ***Requirements for Parties Who Do Not Reside in, or Have a Business License in California***

It has been difficult to deal with transactions that have occurred between sellers/buyers that did not reside (domicile) in or have a business license in California. To eliminate these difficulties, staff proposes to amend Rule 2007(e)(2), adding subparagraph (I), to require that if a seller or buyer does not reside (domicile) in and is not registered with the Secretary of State to conduct business in California, that party will appoint a licensed Agent for Service of Process. Such appointments need to remain in effect for a minimum of four years after the most recent RTC trade activity. In addition, all legal issues involving such RTC transactions must be heard and resolved through the Superior Court of the State of California. Written documentation is required to be submitted at the time of the trade, or to be on file, regarding the appointment of a licensed Agent for Service of Process, resolution of disputes, and court jurisdiction.

Rule 2010 – Administrative Remedies and Sanctions

Rule 2010 specifies provisions to ensure that RECLAIM facilities which exceed their Allocation provide compensating emission reductions. This rule also provides for administrative penalties for RECLAIM rule violations.

Rule 2010(b)(1) is proposed to be amended to clarify that when a RECLAIM facility goes through a full or partial change of ownership, the original prior operator of the facility at the time the violation occurred, as well as the current or subsequent owner(s)/operator(s), will also be liable for the prior operator's past violations of the facility's allocation. Staff proposes the following mechanism:

- First, reduce the original facility's Allocation, if any, to cover total exceedances to the maximum extent possible;

- After that, staff proposes to proportion any remaining required reductions among any later facilities, holding a valid facility permit, that took over operation from the original facility based on their facility's potential to emit;

- Additionally, if needed, staff proposes to revise the facility permits of the original and subsequent Facility Permit holders in accordance with subparagraph (b)(1)(B) to prevent the violation for occurring again.

Proposed Draft Findings for Requirements under California Health and Safety Code (H&SC)

California H&S Code §40727 requires that prior to adopting, amending or repealing a rule or regulation, the AQMD Governing Board shall make findings of necessity, authority, clarity, consistency, non-duplication, and reference based on relevant information presented at the public hearing and in the staff report. Following are the proposed draft findings:

Necessity

A need exists to amend Rules 2002, 2004, 2007, and 2010 of RECLAIM regulation. Proposed amendments to Rule 2002, Table 1 – RECLAIM NOx Emission Factors, are needed to clarify emission factors for cement kilns as originally intended. Rule 2004 is proposed to be amended to provide relief from submitting certified reports with zero emissions for RECLAIM facilities that meet certain specific conditions. Rule 2007(e)(2) amendments will clarify requirements for sellers or buyers that do not reside in or have a license to conduct business in California to make the rule more enforceable. Rule 2007(e)(2) is proposed to be amended to clarify the reporting requirements for parties entering into a forward contract to improve rule enforceability. Proposed amendments to Rule 2010(b)(1) are needed to improve enforcement of the rule for situations involving change of ownership and past violations of the facility's allocation, and a mechanism is proposed to assign liability among the various impacted operators.

Authority

The AQMD Governing Board has authority to amend existing Rules 2002, 2004, 2007, and 2010 pursuant to California H&S Code §§ 39002, 39616, 40000, 40001, 40440, 40440.1, and 40702.

Clarity

The proposed amended rules are written or displayed so that their meaning can be easily understood by the persons directly affected by them.

Consistency

The proposed amended rules are in harmony with and not in conflict with or contradictory to, existing statutes, court decisions or state or federal regulations.

Non-Duplication

The proposed amended rules will not impose the same requirements as any existing state or federal regulations. The amendments are necessary and proper to execute the powers and duties granted to, and imposed upon, AQMD.

Reference

By adopting the proposed amended rules, the AQMD Governing Board will be implementing, interpreting and making specific the provisions of the California H&S Code §§ 39002, 39616, 40001, 40440 (a), 40440.1, 40702, and Title 42 U. S. C. Section 7410.

Findings Required for a Market-Based Incentive Program

California H&S Code § 39616(e) requires the AQMD Governing Board to make findings that RECLAIM 1) achieves equivalent or greater emission reductions at equivalent or less cost, 2) has comparable enforcement and monitoring, 3) does not delay attainment with California ambient air quality standards, and 4) promotes privatization of compliance and the use of electronic/computer technology for record keeping purposes. These findings were originally made in October 2000 and subsequently in May 2001, December 2003, January 2005, and May 2005. The current proposed amendments are administrative in nature and do not change these findings.

Comparative Analysis

In order to determine compliance with California H&S Code § 40727, the District staff is required to develop a comparative analysis with existing regulations as outlined in California H&S Code § 40727.2. This comparative analysis is required for any source-specific rules that impose new emission standards or requirements of air pollution control equipment. Since the proposed amendments to RECLAIM are administrative in nature and do not impose any new requirements related to emission limits or air pollution control equipment, the District is not required to conduct a comparative analysis under California H&S Code §40727.2.

Incremental Cost Effectiveness Analysis

California H&S Code §40920.6 requires the District to develop an incremental cost effectiveness analysis for any source-specific rules that impose new emission standards or requirements of air pollution control equipment when there are more than one control options that would achieve the emission reduction objectives. Since the proposed amendments to

RECLAIM are administrative in nature and do not impose any new requirements related to air pollution control equipment, an incremental cost effectiveness analysis under California H&S Code §40920.6 is not required.

Impact Assessments

California Environmental Quality Act (CEQA)

Staff has reviewed the proposed amendments to Rule 2002 – Allocations for Oxides of Nitrogen (NOx), and Oxides of Sulfur (SOx); Rule 2004 – Requirements; Rule 2007 – Trading Requirements; Rule 2010 – Administrative Remedies and Sanctions, pursuant to CEQA Guidelines §15002(k)(1) - Three Step Process, and has determined that the proposed amendments are administrative in nature; and it can be seen with certainty that there is no possibility that the proposed amendments will have a significant impact on air quality or other environmental areas and, therefore, the proposed project is exempt from CEQA pursuant to CEQA Guidelines §15061(b)(3) – Review for Exemption. If approved by the Governing Board, a Notice of Exemption (NOE) will be prepared for the proposed project pursuant to CEQA Guidelines §15062 – Notice of Exemption, and mailed to the county clerks of Los Angeles, Orange, Riverside, and San Bernardino counties.

Socioeconomic Assessment

Staff has reviewed the proposed amendments to Rule 2002 – Allocations for Oxides of Nitrogen (NOx), and Oxides of Sulfur (SOx); Rule 2004 - Requirements, Rule 2007 – Trading Requirements; Rule 2010 – Administrative Remedies and Sanctions, and has determined that the proposed amendments are administrative in nature, and therefore would not result in any adverse cost or socioeconomic impacts.

Implementation and Resources

The proposed amendments are administrative in nature and impose no additional requirements. Existing AQMD resources will be used to implement the amended rules.